IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 531 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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RENUKABEN DINESH VED

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Revision Application No. 531 of 2001

MR NIRAV C THAKKAR for Petitioner No. 1-2

MR BD DESAI Ld. APP for Respondent No. 1

MR YOGESH S LAKHANI for Respondent No. 2

CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 24/04/2002

ORAL JUDGEMENT

Heard Mr. Nirav C Thakkar for petitioners, Mr BD Desai ld. APP for respondent no. 1-State and Mr. Nishidh Thakkar for Mr YS Lakhani learned counsel for respondent no. 2.

I have carefully considered the following contentsof para-4 of the complaint filed before the Court of J.M.F.C., Jamnagar for the offence punishable under sec. 138 of the Negotiable Instrument Act (hereinafter referred to as "the Act"). It would be proper to reproduce para-4 as it is in vernacular Gujarati because it conveys the straight meaning and since in which the same is incorporated as part of the complaint.

Para-4:

It is rightly submitted by the ld. counsel for the petitioners that two partners namely Haresh Damodar Ved and Mahesh Damodar Ved were the Managing partners dealing with the day to day affairs of the firm, even as per the complainant, on 9.7.99 when the telegraphic notice was served on them for the alleged wrong committed by the firm. It is contended that these two petitioners were not partners of the firm on the day on which the cheque in question was tendered for realisation and/or bounced for want of insufficiency of funds. Irrespective of this contention, the scheme of sec. 138 of the Act read with sec. 141 of the Act is irrelavant.

The ld. counsel for the respondent-complainant Mr. Nishidh Thakkar for Mr. YS Lakhani has placed reliance on the decision reported in 1998(2) GLH p. 567 in case of Bhavesh B. Mehta & Anr. vs. State of Gujarat & Anr., wherein this Court has held that where the drawer of the cheque is a company then the notice as contemplated is a notice to a drawer alone and no other persons. Individual notice to every person in-charge of or responsible of the company for the conduct of his business is not necessary. In para-4 of the decision, this Court has observed that:

"The question that has been posed for consideration by the court is whether in a case where the person committing an offence under S. 138 of the Negotiable Instruments Act, 1881, (hereinafter referred to as "the Act") is a Company, the notice envisaged under S. 138 of the Act is required to be given to every person, who at the time the offence was committed, was in charge of and was responsible to the company for

the conduct of the business of the company as well as the company". (Emphasis supplied for this decision).

The principle brought to the notice by the ld. counsel for the original complainant would not help the complainant because it is not the say of the present petitioners that they were partners of the firm, but not served individually with the statutory notice as contemplated under the scheme of the Act in!dividually. On the contrary, it is pointed out by the petitioners that the contents of the telegraphic notice produced by the complainant himself if read in reference to above referred para-4 of the complaint, it is clear that the complainant himself has not contended that present petitioners were responsible for or in charge of the business of the firm in question. Even for the sake of argument, present petitioners are considered to be amongst group of the partners, they are in two sets i.e. in two different classes, that is (i) the partners dealing with the administration or say responsible for business of the partnership firm and (ii) all partners of the firm to whom the statutory notice has been served on 12.7.99. When the complainant himself has not positively averred that present petitioners were concerned with the administration of the business of the partnership firm, they could not have been prosecuted for the offence punishable under sec. 138 of the Act. The decision cited by the ld. counsel for the ori. complainant if considered, the observation of this Court in para-6 of the very judgment helps the present petitoners where this Court has said that:

..Hence, for the purpose of S. 141 of the Act, a partnership firm is a company and the partner thereof is a director. It is, therefore, evident that if the person committing an offence under S. 138 of the Act is a partnership firm, every partner thereof who is in charge of and is responsible to the firm for the conduct of the business of the firm as well as the firm shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly."

It is not required to reproduce the entire section 141 of the Act, but it is difficult to say that the petitioners are liable to rebutt any presumption in! present set of facts.

Ld. Counsel for ori. complainant Mr. Thakkar has tried to analyse the fact in reference to one public notice dated 24.6.99 allegedly issued by partners of firm Bha Electronics where four persons have signed including preent petitioners. It would be beneficial to quote the contents of this public notice:

"We the undersigned were the Partners of the Firm "Bha Electronics" Jamnagar. Originally Mr. Haresh Damodar Ved, Madhuriben Damodar Ved and Smt. Renuka Dinesh Ved were the partners of the firm. Thereafter, w.e.f. dt. 1.1.1999 Smt. Madhuriben d. Ved and Smt. Renuka D. Ved were retired from the firm and Mr. Mahesh Damodar Ved joined as a partner in the firm. Thereafter, w.e.f. dt. 24.6.1999 Mr. Haresh D. Ved was retired from the firm. Mr. Mahesh D. Ved has takenover firms assets and all liabilities and dues. Now retiring partners shall not be liable for the oustanding dues & liabilities of the firm. It is also informed that any person who holds the cheques or any kind of instruments of the firm which is signed by the retiring partners, he shall have to change the cheque or instrument within five days from Mahesh D. Ved."

So far as the case pleaded by the present petitioners is concerned, the contents of public notice would not strengthen the case of the original complainant because the same is very general in nature and the signatories have tried to convey to all concern that henceforth how and through whom the firm Bha Electronics should be handled. The contents of this public notice is obvously not binding to the complainant, it only indicates how the liability has been transferred and accepted by partners inter-se.

It is also submitted that the complainant was misled by the present petitioner and therefore, under the wrong impression he has issued telegraphic notice only to partners on 9.7.1999 by accepting the contents of the public notice, but the same would not help the petitioner. It is in the nature of the explanation which is obviously cannot be accepted because this Court is supposed to read the complaint as it is and should interprete the document, in its plain meaning, produced by the complainant at the time of instituting the complaint.

There is nothing on which it can be said to be an

admission of fact in the public notice from where it can be inferred that on the date on which the cheque in question was tendered for realisation to the present petitioners were partners and were responsible for the business or in charge of the firm in question. Ld. JMFC, Jamnagar has not considered the facts in correct perspective. The finding recorded in para-6 of the order under challenge is also not a positive finding and the same is not accordance with the scheme of sec. 141 of the Act and it is erroneous to say that it would be the duty of the accused-persons to say that he wasnot an active partner or say concern with the day to day affairs or business of the firm where there is no positive averment to that effect in the complaint. The presumption provided in the scheme has not been interpreted correctly. It is, therefore, righlty argued by the ld. counsel for the petitioner that the finding recorded by the ld. J.M.F.C. is patently wrong and erroneous and, therefore, requires to be disturbed.

This revision application is therefore, allowed. Both the petitioners are ordered to be discharged from the proceedings initiated in the Court of Ld.J.M.F.C., Jamnagar for the offence punishable under sec. 138 of the Negotiable Instruments Act.However, it is clarified that the Criminal Case No. 3545 of 1999 shall proceed against other accused persons and the firm. Rule is made absolute accordingly.

(C.K. BUCH, J)
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